उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध).

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.778/2005

APPELLANT (In Jail) — Radhu Kewat, son of Narottam Kewat, aged about 25 years, resident Village Mongrapali, P.S. Bagbahara, District Mahasamund (C.G.)

Vs

RESPONDENT — State of Chhattisgarh, Through: P.S.-Bagbahara, Distt. Mahasamund (C.G.)

Present:
Mr. Vinod Lalchandani, Advocate for the appellant.
Mr. N.K. Mehta, Panel Lawyer for the respondent-State.

ORAL JUDGMENT

(16th November, 2007)

Per Dhirendra Mishra, J:

This criminal appeal is directed against the judgment of conviction and order of sentence dated 8.9.2004 passed in Sessions Trial No.11/03 whereby learned 2nd Additional Sessions Judge, Mahasamund has convicted the appellant under Section 376 of Indian Penal Code (for short 'IPC') and sentenced to undergo R.I. for 7 years and to pay a fine of Rs.2,000/-, in default of payment of fine to undergo additional R.I. for 4 months.

Case of the prosecution, in brief, is that on 26.5.2002 at about 10.00 a.m. when the prosecutrix was alone in her house and her mother had gone to work, the accused came to her house on the pretext of asking 'Gudaku' and thereafter committed rape with her. The above fact was disclosed by the prosecutrix to her mother Urmila (PW-1) when she returned from the place of work. Her mother convened a meeting of elders in the village,

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मामला क्रमांक.....**सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

however, the accused did not attend the meeting and therefore, she lodged the report of the incident on 27.5.2002 at about 10.00 p.m.

During investigation, the prosecutrix was sent for medical examination to the Community Health Centre, Bagbahara where Dr. Alka Pargal (PW-6) examined her and gave report of Ex.P-6. Wearing apparels of the prosecutrix i.e. Peticoat, Sari, and vaginal slides seized during investigation were also sent for medical examination to the Forensic Science Laboratory, Raipur and the report of FSL is Ex.P-17.

After completing investigation, the charge sheet was filed. During investigation, the prosecution examined 10 witnesses in all and thereafter statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the evidence available against him in the prosecution case and pleaded innocence & false implication due to animosity. However, learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the appellant as mentioned in Para-1 of this judgment.

Learned counsel for the appellant referring to the statement of the prosecutrix has argued that the prosecutrix did not raise alarm when the accused committed rape with her and she kept quite. She walked inside the room of her own and there is no allegation that she was dragged by the accused. Report was lodged after 36 hours of the incident and there is no convincing explanation for the delay. The prosecutrix has also stated that the accused did not threat her. Similarly her mother Urmila (PW-1) has also

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

stated that her daughter had told her that she did not shout at the time of incident and thus from the conduct of the prosecutrix it is evident that the prosecutrix was the consenting party.

On the other hand, learned counsel for the State supporting the impugned judgment has argued that after the incident the prosecutrix narrated about the same to her mother when she returned from the place of work and had she been a consenting party, there was no occasion for her to narrate the incident to her mother and there is no defence taken by the accused during trial that the report was lodged, as the prosecutrix was seen by others with the accused at the time of incident. Her version is corroborated from the statement of Dr. Alka Pargal (PW-6) who has examined the prosecutrix and found one abrasion over cheek and has also noticed a laceration of size 1cm x ½cm near hymen, swelling & bleeding in the hymen and the prosecutrix was suffering from pain. FSL report is also positive, as human sperm has been found on the wearing apparels of the prosecutrix.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the evidence available on record.

Conviction of the appellant is based on the statements of the prosecutrix (PW-9), her mother Urmila (PW-1) and also on the statement of Dr. Alka Pargal (PW-6).

The prosecutrix (PW-9) in Para-2 of her deposition has categorically stated that the accused came to her house while she was standing in the

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मामला क्रमांक..... **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
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Verandah, caught hold of her hand, took her inside and forcibly raped her. Since no one was present in the house, therefore, she did not raise alarm. The accused did not threat her and after committing the offence he went away from her house. She has also stated that after the incident she went to her mother and told about the incident to her and thereafter meeting was convened in the village, however, the accused had fled thereafter and after meeting she lodged the report. Her version is duly corroborated from the statement of Dr. Alka Pargal (PW-6), who has found injury over vagina of the prosecutrix and pain.

Argument of learned counsel for the appellant that the conduct of the prosecutrix is suggestive that she was the consenting party cannot be accepted particularly in view of the fact that had she been the consenting party, there was no occasion for her to narrate the incident to her mother after the incident in the evening. Moreover, her statement is duly corroborated from the statement of doctor who examined her and found injury over her private part and thus, the presence of injury over the person of prosecutrix, who is a married lady, belies the defence of consent.

In the result, the appeal preferred by the appellant has no substance, the same is liable to be dismissed and it is hereby dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

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